

***** Electronically Filed*****

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

SCOTT FERRIS, JODI FERRIS and	:	CIVIL ACTION
A.F., a minor, by her parents	:	
Plaintiffs	:	
	:	
v.	:	No. 1:12-CV-00442-JEJ
	:	
MILTON S. HERSHEY MEDICAL	:	
CENTER, CAITLIN J. MALLIS, MD,	:	
IAN M. PAUL, MD, et al.,	:	
Defendants	:	JURY TRIAL DEMANDED

DEFENDANTS ANGELICA LOPEZ-HEAGY
AND DAUPHIN COUNTY SOCIAL SERVICES FOR CHILDREN AND
YOUTH'S MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6)

Defendants Angelica Lopez-Heagy and Dauphin County Social Services for Children and Youth, by and through their counsel, Marshall, Dennehey, Warner, Coleman & Goggin, and John P. Gonzalez, Esquire and Donald L. Carmelite, Esquire, file this Motion to Dismiss Plaintiffs' Complaint pursuant to Fed. R. Civ. P. 12(b)(6) and aver the following:

1. Plaintiffs, Scott and Jody Ferris, individually and as the parents of minor Plaintiff, A.F., initiated this matter by way of Complaint on March 9, 2012. (Doc. 1). Plaintiff's Complaint is attached hereto as **Exhibit 1**.

2. On March 29, 2012, the undersigned counsel entered an appearance on behalf of Moving Defendants, Angelica Lopez-Heagy and Dauphin County Social Services for Children and Youth (Docs. 3 and 6), and filed a Waiver of Service on behalf of Defendant Angelica Lopez-Heagy (Doc. 4), and Dauphin County Social Services for Children and Youth (Doc. 5).

3. Plaintiffs' Complaint asserts civil rights and common law tort claims against Moving Defendants, along with the Milton S. Hershey Medical Center and various medical professional and staff of the Milton S. Hershey Medical Center.

4. Specifically, those claims asserted against Moving Defendants are as follows:

- a. § 1983 claim for violation of Plaintiffs' United States Constitution Fourteenth Amendment procedural due process rights (Count I);
- b. § 1983 claim for violation of Plaintiffs' United States Constitution Fourth Amendment right to be secure against unreasonably seizures (Count II);
- c. Common law claim for false imprisonment (Count IV); and

d. Common law claim for "tortious infliction of emotional distress."

(Count V). (Doc. 1, see Plaintiffs' Complaint attached hereto as **Exhibit 1**).

5. Plaintiffs seek compensatory and punitive damages as well as attorney's fees and costs.

6. Plaintiffs' claims against Moving Defendants arise from the removal of A.F. from Mr. and Mrs. Ferris' custody pursuant to the law enforcement custody Order issued by Defendant Officer Rian Bell, Dependency Petition filed by Defendant Angelica Lopez-Heagy on June 28, 2010, the Honorable Todd Hoover's June 28, 2010 Order granting the Dependency Petition, Master's June 28, 2010, Shelter Care Hearing recommendation and Master's July 7, 2010 Recommendation for Adjudication. See Law Enforcement Custody Order attached hereto as **Exhibit 2**; Dependency Petition attached hereto as **Exhibit 3**; June 28, 2010 Order of President Judge Hoover attached hereto as **Exhibit 4**; Master's Shelter Care Hearing June 28, 2010 Recommendation attached hereto as **Exhibit 5**; Master's July 7, 2010 Recommendation for Adjudication attached hereto as **Exhibit 6**.

7. Dauphin County Social Services for Children and Youth is not a person within the meaning of § 1983 and as such, all claims against it must be dismissed. Billups v. Penn State Milton S. Hershey Medical Center, 2012 U.S. Dist. LEXIS 56414 *52-53 (M.D. Pa. April 23, 2012).

8. Plaintiffs failed to plead any facts supporting a viable Monell claim against Dauphin County Social Services for Children and Youth. Monell v. Dep't of Social Serv., 436 U.S. 658 (1978).

9. Defendant Lopez-Heagy is entitled to absolute immunity for her actions. Ernst v. Children Review Services of Chester County, 108 F.3d 486, 493 (3d Cir. 2009); 23 Pa. C.S.A. § 6318.

10. Defendant Lopez-Heagy is entitled to qualified immunity. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).

11. Defendant Lopez-Heagy did not violate Plaintiffs' United States Constitution Fourteenth Amendment procedural due process rights. Sharp v. County of Dauphin, 2010 U.S. Dist. LEXIS 92799, *12 (M.D. Pa. September 7, 2010), Brown v. Daniels, 128 Fed. Appx. 910, 914-15 (3d Cir. April 25, 2005) (adopted in part by Atkins v. Luzerne County Children and Youth Services of Luzerne County, 2205 U.S. Dist. LEXIS 19006, *24 (M.D. Pa. September 2, 2005)).

12. Defendant Lopez-Heagy did not violate Plaintiffs' United States Constitution Fourth Amendment rights. Atkins, 2005 U.S. Dist. LEXIS at *23; Studli v. Children and Youth and Families Central Regional Office, 346 Fed. Appx. 804, 809-810 (3d Cir. September 9, 2009).

13. Angelica Lopez-Heagy did not falsely imprison A.F. Park v. Veasie, 2012 U.S. Dist. LEXIS 56438 *45 (M.D. Pa. April 20, 2012) (citing Renk v. City of Pittsburgh, 527 Pa. 68, 641 A.2d 289, 293 (Pa. 1994)).

14. Defendant Lopez-Heagy did not cause tortious infliction of emotional distress to Plaintiffs. Park v. Veasie, 2012 U.S. Dist. LEXIS 56438 *42 (M.D. Pa. April 20, 2012) (quoting Swisher v. Pitz, 2005 Pa. Super. 56, 868 A.2d 1228, 1230 (Pa. Super. Ct. 2005); 42 Pa. C.S. § 8542, §8545.

15. Plaintiffs are not entitled to punitive damages. City of Newport v. Fact Concerts, Inc., 453 US 247, 271 (1981); 42 Pa. C.S. § 8553.

16. For the reasons more fully set forth in the Brief in Support of Moving Defendants' Motion to Dismiss, which will be filed consistent with the Federal Rules of Civil Procedure, and incorporated herein by reference, Plaintiffs' Complaint against Moving Defendants must be dismissed with prejudice.

WHEREFORE, Angelica Lopez-Heagy and Dauphin County Social Services for Children and Youth, respectfully request this Honorable Court grant their Motion to Dismiss and dismiss Plaintiffs' claims with prejudice.

Respectfully submitted,

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Dated: May 18, 2012
05/888657.v1

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a copy of the foregoing upon the person(s) and in the manner indicated below, which service satisfies the requirements of the Federal Rules of Civil Procedure, ECF notification as follows:

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